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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/736,421	12/15/2003	Lynetta Jean Freeman	END5051/0515141 3987		
	7590 01/25/2014 N TODD, LLC	0	EXAMINER		
2200 PNC CEN	ITER	AZPURU, CARLOS A			
201 E. FIFTH STREET CINCINNATI, OH 45202			ART UNIT	PAPER NUMBER	
			1615		
			NOTIFICATION DATE	DELIVERY MODE	
			01/25/2010	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@fbtlaw.com

		Application No.	Applicant(s)			
Office Action Summary		10/736,421	FREEMAN ET AL.			
		Examiner	Art Unit			
		Carlos A. Azpuru	1615			
Period fo	The MAILING DATE of this communication app or Reply	ears on the cover sheet with the c	orrespondence address			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status						
1)[\	Responsive to communication(s) filed on <u>07 Oc</u>	ctoher 2009				
,	This action is FINAL . 2b) ☐ This action is non-final.					
′=	<i>/</i> —					
٥/١	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
	closed in accordance with the practice under Ex parte Quayre, 1935 C.D. 11, 455 O.G. 215.					
Dispositi	on of Claims					
4)🛛	☑ Claim(s) <u>1,3,4,6-9,11-24,27,28 and 32-47</u> is/are pending in the application.					
	4a) Of the above claim(s) is/are withdrawn from consideration.					
	5) Claim(s) is/are allowed.					
	6)⊠ Claim(s) <u>1,3,4, 6-9, 11-24, 27-28 and 32-47</u> is/are rejected.					
7)	Claim(s) is/are objected to.	-				
/	Claim(s) are subject to restriction and/or	election requirement				
ت (۵	are subject to restriction and/or	cicolion requirement.				
Applicati	on Papers					
9)☐ The specification is objected to by the Examiner.						
-	10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.					
,	Applicant may not request that any objection to the					
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
The path of declaration is objected to by the Examiner. Note the attached Office Action of John F 10-132.						
Priority ι	ınder 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
2) Notic 3) Inforr	t(s) e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO/SB/08) r No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	te			

DETAILED ACTION

Receipt is acknowledged of the amendment filed 10/07/2009.

The rejection of the claims under 35 USC 112, first paragraph is maintained in view of applicant's amendment for the following reasons:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3, 4, 6-9, 11-24, 27-28 and 32-47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has amended claim 1 to read on "a reservoir, wherein the reservoir contains active agent". However, the specification is clear at [0042] that the device delivers a therapeutically effective amount of an active agent from a biomaterial.

Applicant is requested to use this language in the claims. As written there is no connection between the biomaterial and the active agent which in broadest terms could be construed as separate entities, rather than one dependent upon the other. That is

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the biomaterial produces the bioactive. As such, this is considered new matter. Correction is requested.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos A. Azpuru whose telephone number is (571) 272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Wax can be reached on (571) 272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carlos A. Azpuru/ Primary Examiner, Art Unit 1615

Carlos A. Azpuru Primary Examiner Art Unit 1615

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